

Message Text

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TO USMISSION GENEVA PRIORITY

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MTN DEL

E.O. 11652: N/A

TAGS: ETRD, MTN

SUBJECT: GOVERNMENT PROCUREMENT

REFERENCE: GENEVA 8548; GENEVA 8552

1. FOLLOWING GUIDANCE IS PROVIDED FOR MEETING OF NTM SUB-
GROUP ON GOVERNMENT PROCUREMENT JUNE 12-13 AND MEETINGS
LATER IN WEEK OF PLURILATERAL DRAFTING GROUP.

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2. WITH REGARD TO THE SUBJECT OF SPECIAL AND DIFFERENTIAL
TREATMENT, DEL SHOULD NOTE CONFUSION THAT ARISES DUE TO THE
MULTIPLICITY AND OVERLAPPING NATURE OF PROPOSALS IN THIS
AREA OF THE CODE. CONSIDERABLE EFFORT HAS BEEN DEVOTED TO
DRAFTING OF AGREED NEGOTIATING TEXTS FOR OTHER AREAS OF THE
CODE. DEL SHOULD URGE INDIA AND OTHER COUNTRIES THAT HAVE
A SPECIAL INTEREST IN S&D TO MEET AND SIMILARLY DRAFT NEGO-

TIATING TEXT FOR S&D. U.S. WOULD BE HAPPY TO PARTICIPATE IN SUCH A DRAFTING EFFORT, AS DEL STATED AT LAST SUBGROUP MEETING WHEN MEXICO MADE A SIMILAR PROPOSAL. DEL SHOULD CONTINUE TO RESIST INCLUDING INDIAN SUGGESTIONS CONTAINED IN W/155 IN A REVISED NEGOTIATING TEXT. AT THIS STAGE OF THE NEGOTIATIONS NEW ADDITIONS TO REVISED TEXT SHOULD HAVE WIDER ACCEPTANCE THAN YET ACHIEVED BY INDIAN PROPOSAL.

3. REGARDING SUBSTANCE OF INDIAN SUGGESTIONS, U.S. CANNOT ACCEPT ANY OF THE PROPOSED AMENDMENTS AS DRAFTED. ALTHOUGH WE ARE WILLING TO WORK WITH THE PREAMBLE PARAGRAPH, WE OBJECT TO CONCEPT THAT, "IN ORDER TO ACHIEVE THEIR SOCIO-ECONOMIC OBJECTIVES . . . DEVELOPING COUNTRIES NEED TO ADOPT DIFFERENTIAL MEASURES." WE CANNOT AGREE TO AUTONOMOUS DETERMINATION OF SCOPE AND COVERAGE BY LDC'S PROPOSED IN PARA 1(D) OF SCOPE AND COVERAGE, NOR TO THE BROAD EXCEPTION PROPOSED IN PARA 2(C). FINALLY, WE OBJECT STRONGLY TO THE INDIAN PROPOSAL TO MODIFY THE PRINCIPLES OF NATIONAL TREATMENT AND NON-DISCRIMINATION FOR PURPOSES OF S&D. THESE PRINCIPLES ARE THE CORNERSTONE OF THE GOVERNMENT PROCUREMENT CODE AND SHOULD NOT BE QUALIFIED. TO THE EXTENT THAT WE CAN RESPOND TO LDC CONCERNS, THIS WOULD BE REFLECTED IN OTHER SECTIONS OF THE CODE.

4. REGARDING CANADIAN PROPOSED ADDITION TO SCOPE AND COVERAGE SECTION OF CODE, WE AGREE THAT SOME PROVISION SHOULD BE LIMITED OFFICIAL USE

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MADE FOR MODIFICATION OF ENTITY BINDINGS. PARAS THREE THROUGH SEVEN SET OUT PROCEDURES, MODELED ON GATT ARTICLE XXVIII, TO TAKE ACCOUNT OF POSSIBLE NEEDS TO "MODIFY OR WITHDRAW" ENTITIES ALREADY UNDER THE CODE, INCLUDING USE OF COMPENSATORY ADJUSTMENTS TO MAINTAIN PREVIOUSLY-EXISTING LEVELS OF COMMITMENTS ON ENTITY COVERAGE. APART FROM CONDITION WHEN A GOVERNMENT IS REORGANIZED IN A SIGNATORY COUNTRY, WE ARE UNCLEAR ON CIRCUMSTANCES FOR RECOURSE TO SUCH PROCEDURES. DEL SHOULD SEEK CLARIFICATION ON THIS POINT AND ON MEANING OF "MODIFICATION" OF ENTITIES. PROCUREMENT IS VASTLY DIFFERENT FROM TARIFFS. U.S. IS CONCERNED ABOUT POSSIBILITIES FOR EASY WITHDRAWALS OF ENTITIES, PARTICULARLY IF SUCH WITHDRAWALS ARE MADE TO OBTAIN RELIEF FROM COMPETITIVE IMPORTS. DEL SHOULD QUESTION WHETHER CANADA INTENDED THAT THESE PROVISIONS FOR MODIFICATION OF ENTITIES WOULD SUBSTITUTE FOR ESCAPE CLAUSE OR SAFEGUARD PROVISIONS IN CODE. OUR INTEREST IS IN MAINTAINING STABILITY OF ENTITIES INCLUDED IN THE SCHEDULE OF ENTITIES.

5. THE CANADIANS HAVE IN THE SAME PROPOSAL TREATED PARAGRAPHS 8(A) AND (B) AS A KIND OF S&D FOR DEVELOPING COUNTRIES. ESSENTIALLY, THE CANADIAN PROPOSAL WOULD ALLOW

LDC'S ACCESS TO MODIFICATION OF BINDINGS AT ANY TIME RATHER THAN ONLY PERIODICALLY DURING A DESIGNATED TIME PERIOD. IN VIEW OF THE POSSIBILITY FOR FREQUENT USE BY THE LDC'S OF THE WITHDRAWAL PROCEDURES, WE SHOULD CONTINUE TO FURTHER EXPLORE POSSIBLE ADOPTION OF SIGNATORY COMMITTEE APPROVAL OF A WAIVER-TYPE APPROACH INSTEAD OF THE SELF-ELECTION METHOD DESCRIBED.

6. WE ENDORSE THE GENERAL DIRECTION POINTED TO IN THE PARAGRAPHS UNDER "NEGOTIATIONS". DEPENDING ON THE OUTCOME OF THE NEGOTIATIONS ON CODE COVERAGE, WE MAY WANT TO PROPOSE A STRONGER STATEMENT ON STEPS TO EXPAND COVERAGE OF ENTITIES IN FUTURE NEGOTIATIONS THAN APPEARS THERE.

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7. IN DISCUSSIONS CONCERNING FINAL PROVISIONS OF THE PROCUREMENT CODE, DEL SHOULD BE AWARE THAT WE ARE EXAMINING THE DESIRABILITY OF INCLUDING A GATT ARTICLE XXXV-TYPE PROVISION TO ALLOW FOR THE NON-APPLICATION OF THE CODE BETWEEN SIGNATORIES. ALTHOUGH WE DO NOT PLAN TO PROPOSE SUCH A PROVISION AT THIS TIME, DEL SHOULD EXPLORE BILATERALLY WITH APPROPRIATE DELEGATIONS THEIR VIEWS ON INCLUDING SUCH A PROVISION IN THE CODE. WE NOTE THAT THE EC HAS RAISED THIS ISSUE WITH DC DELS IN CONNECTION WITH SAFEGUARDS CODE AS A POSSIBLE SOLUTION FOR THEIR CONCERN ABOUT PROVIDING CODE BENEFITS TO EASTERN EUROPEAN SIGNATORIES. WE SHARE THE EC'S CONCERN TO SOME EXTENT, BUT ARE STILL CONSIDERING THE RAMIFICATIONS OF AN ARTICLE XXXV APPROACH. SUCH AN APPROACH COULD BE USED TO FORESTALL POSSIBLE DOMESTIC OPPOSITION TO APPLYING A NATIONAL TREATMENT PROVISION IN THE PROCUREMENT CODE TO EASTERN EUROPEAN SIGNATORIES. WE WOULD APPRECIATE VIEW OF DEL AS WELL AS THOSE OF OTHER DELS, ESPECIALLY ANY FURTHER INDICATION OF WHAT THE EC MAY HAVE IN MIND. VANCE

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